IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12362 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS

==========

1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BABUBHAI NARANBHAI LIMBACHIA

Versus

COMMISSIONER OF POLICE FOR THE CITY OF SURAT

Appearance:

1. Special Civil Application No. 12362 of 2002

MS BANNA S DUTTA for Petitioner No. 1

MR PRADEEP D BHATE, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE KSHITIJ R.VYAS

Date of decision: 20/05/2003

ORAL JUDGEMENT

The petitioner detenu, Babubhai Naranbhai Limbachia, in this petition under Article 226 of the

Constitution of India, has challenged the order of detention dated 15.11.2002 at Annexure.A to the petition passed by the Commissioner of Police, Surat City, i.e. respondent no.1 herein, under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (in short 'the PASA Act').

In the grounds of detention supplied to the petitioner of the even date, the detaining authority has placed reliance on four pending investigation cases registered against the petitioner by Kapodra Police Station with regard to the incidents which took place in between 20th February 2001 to 17th August 2001 for the alleged offences under Sections 457, 380, 114, 414, and 454 of IPC. Besides the aforesaid cases, the detaining authority has also placed reliance on two incidents alleged to have taken place on 23.6.2002 and 10.3.2002 wherein the petitioner is involved in selling stolen goods, by giving threats at point of knife, which created law and order situation in the area of Varacha Road in the City of Surat. The statements of witnesses with respect to the said two incidents have been recorded, whose identity has not been disclosed by claiming privilege under Section 9(2) of the PASA Act. Considering the aforesaid material, the detaining authority has recorded a finding that the petitioner is a 'dangerous person' within the meaning of Section 2(c) of the PASA Act and with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, the detention of the petitioner is necessary and hence the detention order is passed.

Learned Counsel appearing for the petitioner has assailed the order of detention on various grounds. However, it is not necessary for me to consider each and every contention in view of the fact that the petition is capable of being disposed of on the sole ground of delay in passing the order of detention. Learned Counsel submits that the date of registration of the last offence is 17th August 2002 and the order of detention has been passed on 15.11.2002 and therefore there is delay of about two months in passing the order of detention. She has therefore submitted that the order of detention is bad in law and is required to be quashed and set aside.

This Court, in the case of Elesh Nandubhai Patel v. Commissioner of Police, Ahmedabad City and ors., reported in 1997(1) G.L.H. 381, after relying upon the decision of the Apex Court in the case of Anand Prakash v. State of U.P., [AIR 1990 SC 516], and in the case of

Pradeep Nilkanth v. S. Ramamurthy [1993(2) Suppl.SCC 61] has ruled that unexplained delay makes a ground of detention not proximate, vitiating the order of detention. In the instant case also, there is a delay in passing the order of detention as the detenu was arrested on 17.11.2002 and the order of detention was passed on 15.11.2002. Thus, there is a delay of about 3 days. Apart from that, the date of registration of the last offence is 17th August 2002 and the order of detention is passed on 15.11.2002. Thus, there is a delay of about three months in passing the order of detention and therefore, the livelink between the prejudicial activities of the petitioner and passing the order of detention being snapped. Therefore, in my opinion, the order of detention is bad in law and vitiates the detention of the petitioner and the petition is required to be allowed on this ground alone.

In the result, the petition is allowed. The impugned order dated 15.11.2002 passed against the detenu is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is accordingly made absolute with no order as to costs. Direct service is permitted.

(Kshitij R. Vyas, J.)

Sreeram.